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No. 77-97

In the Supreme Court of the United States

OCTOBER TERM, 1977

ALLIED CHEMICAL CORPORATION, PETITIONER

v.

ANTHONY WHITE AND HENRY CLARK, SR.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

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This memorandum is submitted in response to this Court's order of October 3, 1977, inviting the Solicitor General to express the views of the United States with respect to this case.

This suit arises out of a complaint filed by respondents seeking to intervene as plaintiffs in a successful suit against petitioner Allied Chemical Corporation challenging a seniority system as violative of Title VII of the Civil Rights Act of 1964. During a reduction-in-force, respondents were laid off pursuant to the application of the challenged seniority system and sought back pay relief similar to that obtained by the named plaintiffs. The challenged layoffs had occurred soon after the signing of a conciliation agreement with the Equal Employment Opportunity Commission, and Allied Chemical moved to

dismiss respondents' intervention complaint on the ground that respondents had signed the agreement which contained a clause waiving their right to sue. The district court dismissed the action stating (Pet. App. D-2):

> The gist of the intervenors' position is that they entered into the EEOC agreement without proper legal advice and that they were not advised at the time of available alternate procedures. We do not believe that this is sufficient grounds for the intervenors to ignore the EEOC agreement and attempt to pursue this litigation.

The court of appeals reversed. Finding "at least some evidence before the [district] court * * * that the waivers were signed with less than full knowledge of the bargain that was being struck" (Pet. App. A-7 n. 5), the court of appeals remanded the case to the district court for a hearing to determine whether the intervenors "knowingly and voluntarily" waived their rights by signing the conciliation agreement (Pet. App. A-7).

1. In *Alexander* v. *Gardner-Denver Co.*, 415 U.S. 36, 52 n.15, this Court stated that a district court faced with an asserted waiver of rights granted by Title VII should determine "at the outset that the employee's consent to the settlement was voluntary and knowing." The courts of appeals thus far have had little occasion to consider the application of this requirement in concrete situations, although the Court of Appeals for the Fifth Circuit has held that the proponent of a Title VII release must meet the "classic test" by showing that the release " 'was executed freely, without deception or coercion, and that it was made * * * with full understanding of [the waived] rights.' " *United States* v. *Allegheny-Ludlum Industries, Inc.*, 517 F. 2d 826, 861. The requirement that knowing and voluntary action precondition any forfeiture of Title

VII rights is appropriate because of the fundamental importance of equal employment guarantees. On the other hand, requirements aimed principally at the dangers of deception and coercion cannot be utilized lightly to upset settlement agreements negotiated in good faith by all parties. Conciliation and negotiation are the "preferred means" of resolving Title VII claims. *Alexander* v. *Gardner-Denver Co., supra*, 415 U.S. at 44. The Equal Employment Opportunity Commission negotiates approximately 7,000 such conciliation agreements each year and all those who are affected by Title VII have an interest in preserving the viability of the conciliation process, which depends in part upon the finality of negotiated settlement agreements. This tension between the requirement of legitimacy in the waiver process and the need for dependable finality in settlement agreements imposes special responsibilities upon the district courts in ruling on claims by persons who have signed waiver agreements.

2. In the instant case, respondents who were signatories to a negotiated Title VII settlement sought to intervene in a subsequent private Title VII action claiming that their written waiver of Title VII claims against petitioner was not knowing and voluntary within the meaning of *Alexander* v. *Gardner-Denver Co., supra*. Because of the way in which the issue was litigated in the district court, the specific nature of respondents' claims has not yet been clarified. The complaint in intervention filed by respondents did not address their waiver claim, and it was not adequately illuminated by the parties in depositions or subsequent written motions. As the court of appeals noted, there is some evidence in the record indicating that "the waivers were signed with less than full knowledge of the bargain * * * being struck" (Pet. App. A-7). However, there is nothing to indicate whether this lack of

knowledge is allegedly the result of deception, failure of the Commission attorneys to explain the settlement, ambiguity in the document or waiver provision itself, or respondents' failure to make any effort to understand the agreement they signed. It therefore cannot be determined on the present record whether in fact respondents have presented the type of claim that might render their signed waiver inoperative under the standard announced in *Gardner-Denver*.

Without obtaining a more precise understanding of the cause of respondents' alleged lack of knowledge, the district court dismissed their intervention complaint based upon its view of the "gist of the intervenors' position" and its conclusion that the purpose of conciliation agreements is to avoid further litigation (Pet. App. D-2). The court of appeals correctly found this precipitous disposition inappropriate "[i]n light of the recently— expressed deep concern [in *Alexander* v. *Gardner-Denver Co.*, *supra*, and *Watkins* v. *Scott Paper Co.*, 530 F. 2d 1159 (C.A. 5)] over the necessity for establishing voluntariness before finding an effective waiver of * * * plaintiff's Title VII rights" (Pet. App. A-7). In light of the district court's peremptory disposition, as well as some evidence that respondents lacked knowledge of the agreement they signed, the court of appeals did not exceed its authority in requiring the district court to hold a hearing to determine whether the waiver was "knowing and voluntary." A hearing at which the district court can determine the reasons for the claimed misunderstanding is not only appropriate for a proper initial determination on the waiver issue, but also will facilitate any subsequent review by the court of appeals or by this Court.

Petitioner claims (Pet. 8), however, that the opinion of the court of appeals "would now permit a vast backlog of complex conciliation agreements to be reopened on the

allegation that a party thereto did not fully understand the benefits he or she got, or did not get, under the agreement." This contention rests upon a single sentence in the opinion that states "the district court erred in dismissing the complaints in intervention * * * without * * * holding a hearing to determine whether in fact they comprehended the rights they were relinquishing when they signed the October 1971 EEOC conciliation agreement" (Pet. App. A-7). While the sentence is not without ambiguity, it need not, and should not, be read out of the factual context of this case in which the presence of evidence of misunderstanding was combined with precipitous disposition of still undefined claims that important rights were invalidly waived. The opinion does not require a hearing in every case in which claims are made that settlement agreements were not knowing or voluntary. If the district court, through discovery, the pleading process or other means, had precisely defined the claims before it as involving nothing more than a failure to comprehend a complex agreement, summary disposition would not have been improper. The opinion of the court of appeals is not to the contrary, and that court's refusal to permit precipitous dismissal of respondents' half-understood claims therefore does not merit further review by this Court.

Finally, as petitioner acknowledges, the court of appeals' opinion "fail[s] to set any substantive standards for such hearings" (Pet. 11). Indeed, the court of appeals simply tracks the language of this Court in stating that on remand the district court should determine whether "the intervenors did not knowingly and voluntarily waive their rights" (Pet. App. A-7). If the hearing in the district court shows no more than a lack of understanding, the district court should dismiss respondents' complaint in intervention in light of the explicit waiver of Title VII rights they

signed. Our reading of the record thus far developed suggests no reason to anticipate any other result.

3. Our conclusion that neither the court of appeals' decision here nor this Court's decision in *Gardner-Denver* requires the employer to prove "that each employee [actually] understood * * * the conciliation agreement which had been negotiated * * * under the close supervision of the EEOC" (Pet. App. B-2), does not mean that we agree with petitioner that the sole grounds for declaring a waiver inoperative would be "fraud or substantial wrongdoing by EEOC" (Pet. 6). For example, there may well be situations where the ambiguity of waiver clauses and the inadequacy of explanations offered by attorneys would void a waiver of Title VII rights in the absence of claims of fraud or substantial wrongdoing. See *Watkins* v. *Scott Paper Co.*, 530 F. 2d 1159, 1170-1172 (C.A. 5), certiorari denied, 429 U.S. 861. The courts of appeals have not yet had occasion to apply the knowing and voluntary requirement to many such claims. The lack of cases suggests that there may be little need to consider the application of that standard now, before the courts have dealt with the question in a variety of circumstances.

This case, moreover, presents the question of the appropriate standard for reviewing waiver claims in only hypothetical form on the present undeveloped record. The court of appeals' opinion is brief and unspecific; it essentially requires the district court to make its decision based upon this Court's language in *Gardner-Denver*. The district court may well reject respondents' attempt to void their waiver, and thereby perhaps eliminate the need for further consideration of the issue here. The interlocutory posture of the case therefore makes it inappropriate for review at this time. Should the district court apply an incorrect standard in considering respondents' claim, further appellate review would be available.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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